1952.

File No. O/Agreements/52
No 7/52
Legal Department
G **BRANCH**

Subject:— O/Junior on the agreements

P:29
L

File No. O/Agreements/52
7/52

C O N T E N T S.

Legal Department File No. O. Agreement /1952

No.	H.I./C.No.	Subject	pages
		Opinions on the agreements.	
1.	C-8 10-1-52	Question whether the C.S.D. will have to pay the amount of the freight as claimed by Lionel Edwards & Co. in their letter dated 27-10-1951 .-	1-4
	C-161 18-4-52	Question whether the contention of the Bijapur Dist. Central Cooperative Bank Ltd. Bijapur in para 2 of their letter dated 13-11-51 that the D.C.S. Bombay, to whom the dispute between the Bank and the D.M. has aff referred for trial decision under clause 22 of the Dist.Wholesaler's agreement ought to have followed the procedure laid down in the Indian Arbitration Act, 1940 and shall have issued notices to parties called for evidence and heard the parties fully before passing a final award , is correct. -	5-12
	C-142 1-4-52	Question whether it would be lawful to recover the water charges from the contractors.-	13-16
	C-194 9-5-52.	Question whether the agreement which is at present signed by the Federation of the Bombay Retail Cloth Dealers' Association or by the wholesalers at the time of purchase of cloth from the G.T.C. B'bay and which is in the nature of an undertaking that the specified number of bales would be lifted on the terms and conditions specified therein, should hereafter be executed by the S.T.C. in the name of the Governor of Bombay in view of cl.1 of Article 299 of the Constitution of India & 2) whether the said agreement is valid in law in view of the fact that it is couched in dex such terms that it is binding upon one party only without reciprocal obligation (copies not made).-	17-26
5.	C-388 14-8-52	Question whether in case M/s Alcock Ashdown & Co. and M/s A.P.V.Engineering Co in a court of law.would Govt. be involved in it and if so to what extent	27-42.
6.	C-406 23-8-52	Agreement between the Dist Magistrate, Poona and the Asphleid Industries Corporation Ltd. for repairing all the sheds and treating them with Asphleid - 15 % payment to be made after 5 years the period of guarantee. -	

	R.I./O.No.	Subject	
7.		Question whether the whole amount of Deposit of 15 % can be forefeited for Coy's failure to carry out repairs within the period of 5 years thereby necessitating expenditure on repairs to the extent of Rs. 729/-	43-56.
7.	G-441 12-9-52	Questions(1) Whether the amounts of Rs. 8075-4-0 as lighterage charges incurred by the D.M. Ratnagiri can be recouped from the contractors M/s Currimbhoy Lalljee Sajun Shipping ~~&x~~ Ltd. under the terms incorporated in the correspondence exchanged between the contractors and Govt. - 2)Whether Govt. would be justified in claiming from contractors Rs. 65745/- on account of the loss incurred by Govt. in respect of the country craft Hibatul Reheman in view of the fact that the investigation conducted by the Police Inspector disclosed that the loss was due definitely to malpractice and fraud on the part of the tindel Abdul Rehman and was not due to the shrinkage in the Kelshi Port due to stress of weather.- 3). Whether Govt. would be justified in adjusting the amount of Rs. 43811-0-9 which the Govt. is holding as charges under the contract payable to the contractor against the claim which Govt. has in respect of lighterage charges and loss in respect of C.C. Hibatul Rehman, and 4). Whether a civil suit, if filed against the contractors for the recovery of the balance of amount of Rs. 33389-11-5 will stand	57-66
8.	G-506 6-1052.	Question whether under the agreement the contractor was bound to dry the grass even if it become wet after cutting.-	67-[illegible]
9.	G-498 1-10-52	Agreements between M/s Kaira Dist. Cooperative Milk Producers' Union Ltd. and Govt. regarding supply of milk from Anand to Greater Bombay.-	75-78
10.	G-574 31-10-52	Question whether the excess amounts of Rs. 25,000/- spent by Govt. by engaging costs can be recovered from the Co. under the a greement.-	
11.	G-520 9-10-52	Agreement by M/s R. Naraindas & Co. Country Crafts transporters for Govt. for the year 1947-48 to the claim of Govt. amounting to Rs. 11841-30 on account of transit losses .- Question whether the balance of the amount of Rs. 8158-13-0 out of the deposit of Rs. 20,000/- kept by the Co. with the Govt. under clause 17 of their contract can be withheld	

...o.	R.I./O.No.	Subject	pages
11.		till decision with regard to claim against M/s. Vishwabharti Insurance Co. is made final .-	85-94
12.	G-549 22-10-52	Questions(1) Whether the Sentinel Insurance Co. Ltd can be held liable forthe loss of 208 bags of wheat which were reported to have been jettisoned by the Tindel and (2) Whether the Transporters can be held liable for the loss under clause 5 of the agreements .-	95-98.
13.	G-571 31-10-52	Question regarding dispute relating to the recovery of detention charges at the rate of Re. 0-4-0 per ~~maund~~bale per week paid by Govt. in excess to the provincial Industrial Cooperative Association.-	99-104
14.	G-149 2-4-52 G-228 30-5-52 G-378 6-8-52	Question whether suits can be successfully filed against Shri N.C. Parikh and Shri Volji Deosi for recovery of the loss of Rs. 35495-4-5 and Rs. 8,615-1-9 respectively, incurred by Govt. in view of their failure to take delivery and make payment of stocks of discoloured sugar which they contracted to purchase at the auction sale held on 30-5-51 and which Govt. had to sell at a lower price at a subsequent auction sale in view of their default.-	105-122
15.	G-678 8-12-52	Scrutiny of Draft reply proposed to be given to M/s Anand Milk Products Ltd. -	123-12[illegible]
16.	G-412 26-8-52	Question whether any legal action is feasible against M/s Manures & Feeds for recovery of the loss sustained Govt. -	131-136
17.	G-708 22-12-52.	R.L.A.'s opinion No. G- 441, dated 12-9-52 - Acquittal of the accused by the F.C.M. Dapoli .- Questions(1) whether an appeal may be filed against the order of acquittal in this case and (2) whether the contractors would still be liable for the loss sustained by Govt. under Cl. 2 of the draft agreements as they used the country crafts for transporting Govt. foodgrains which was unseaworthy and whether the suit for recovery of the amount of loss may be filed against the contractors, after the appeal, if filed, is decided .-	137-148

Legal Department.

It is no/ doubt true that before the ~~shm~~ ship arrived at the port of the destination the ship ran aground and the cargo was lost. But this case was a case of advanced freight. In such a case as pointed and in Oriental Steam Ship Co. Vs. Tylor (1893) 2 Q.B.D. 518 at p. 524, freight is the ~~money~~ payable on contract and on contract not depending upon any vicissitude of the voyage at all. In this case according to the conditions in the bill of lading the freight became payable on shipment i.e. as soon as the goods were loaded and shipped. The Civil ~~Sk~~ Supplies Department will have to pay the amount of the freight as claimed by Lionel Edwards and Company in their letter dated the 27th October 1951 (at p. 111 ante).

Sd/-J.R.Dhurandhar.
9-1

Additional Secretary to Government.

U.R. to D.C.S. (Acctts) No. G- 8 , dated the 10th January 1952.

4 copies.

Office of the R.L.A.

Clause 22 of the agreement under which the matter has been referred to the Director of Civil Supplies, Bombay provides that he shall have all the powers conferred upon an arbitrator under the Indian Arbitration Act, 1940. Presumably, the intention ofthis clause was that he should follow the procedure as outlined in the Indian Arbitration Act, since the use of powers cannot be divorced from the discharge of duties enjoined by the Act. In any case the Director of Civil Supplies must give a fair and reasonable opportunity to every party of being heard, which is the elementary principle of natural justice. Similarly, the award must be signed and notice ofthat fact must be given to the parties. All this procedure has not been followed, and any decision given without following it is not likely to be upheld. In these circumstances the Director of Civil Supplies may be requested to follow as far as possible the procedure outlined above andin the relevant provisions of the Indian Arbitration Act, particularly of giving an opportunity of hearing before the decision is given.

-Sd/-P.M.Lad
12-4

Remembrancer of Legal Affairs.

U.R. to S.T.C. No. G- 161 , dated 18th April 1952.

S.C. 26/7

4 copies.

Office of the R.L.A.

It is true that there is no privity of contract between Government and Messrs. Alcock Ashdown & Company and consequently the claim of the latter would be primarily against Messrs. A. P. W. Engineering Company. However, it appears from Messrs. A. P. W. Engineering Company's letter to the Milk Commissioner that they contend that Messrs. Alcock Ashdown and Company were instructed to commence the work of the instance of the Milk Commissioner although the condition for such commencement were not quite favourable. It also appears that Government agreed to pay the actual expenses of the work to Messrs. A. P. W. Engineering Company. In these circumstances, it appears that if Messrs. Alcock Ashdown & Company file a suit against Messrs. A. P. W. Engineering Company, the latter may press for Government being made a party, and in view of these circumstances, if it is likely that the court may hold that Government is a necessary party to the suit. Besides, having agreed to pay the actual expenses to Messrs. A. P. W. Engineering Company, it would be in the interest of Government itself to defend the suit properly as otherwise whatever claim is decreed by the court will have to be later satisfied by Government.

There do not appear to be sufficient materials on record to refute the contention of Messrs. Alcock Ashdown and Company that there were frequent interruptions and alterations as a result of which the cost came to 60 per cent, more than the normal cost. As the cost is considered exorbitant, the assessor's report would be useful for assessing the reasonable cost of erection after making allowances for interruptions, etc. Steps may, therefore, be taken to ~~xx~~ collect materials for assessing the reasonable cost of the work.

Sd/-P.M.Lad
14-8

Remembrancer of Legal Affairs.

U.R. to M. C. No. G- 388, dated the 14th August 1952.

Office of the R.L.A.

The undertaking for purchase of the bales in the form at page 14 ante was given by the Muslim Dyers and Hand Printers' Association, Bombay and under condition 16 of the undertaking the deposit was to be returned to them on their giving an undertaking that they had no complaints whatsoever about the cloth purchased by them. From the State Textile Controller's office note at page 21, it appears that the 3rd deposit was paid by the Association by a cheque on the 20th August 1951. If other conditions of the undertaking are fulfilled the State Textile Controller is bound to refund the deposit to the Muslim Dyers and Hand Printers' Association and Government is not in any way concerned with the agreements made by that Association with Messrs. R.M.Mansukhlal and Company copies of which are at pages 27-36 ante. The view taken by the Solicitors of the Association in their letter at pages 51-55 is correct.

Sd/-P.M.Lad
9-8

Remembrancer of Legal Affairs.

U.R. to S.T.C., No. G- 379 , dated the 9th August 1953.

S.C. 26/7

4 copies.

Office of the R.L.A.

The contractor had accepted the terms and conditions in the draft agreement. Although the writing remained to be executed the terms as accepted would be binding on him.

The loss of 176 bags of Rice was due to the mischief played by the Tindel, who must be taken to be an agent or employee of the contractor. The contractor will be liable to make good that loss under clause 12 of the draft agreement. Even apart from that agreement he would be liable under the general law applicable to Bailees. The contractor had failed to take proper and reasonable care of the goods entrusted to him for carriage by sea. The loss amounting to Rs. 65,74 can be adjusted against the amount of Rs. 43,811/- due from the Government to the contractor. A suit will properly lie against the contractor for the balance still due.

Under the term of the contract the contractor cannot be held liable for the lighterage charges. Clause 7 of the draft agreement provides that the rate to be paid to the contractor would not cover loading and lighterage charges. These letter charges will have therefore to be borne by the Government.

In view of the report of the Zenith Insurance Company and the prosecution of the Tindel, the Zenith Insurance Company might not admo admit the claim of Government for the insured amount, and in view of clause 8 of the Agreement the amount will have to be recovered from the contractor. The institution ofthe suit may however await the result of the prosecution.

Sd/-P.M.Lnd
11-9

Remembrancer of Legal Affairs.

U.R. to D.C.S.(Accounts), No. G - 441, dated the 12th September 1952.

Office of the R.L.A.

From clause 6 of the first part of the agreement it appears that about 50 to 100 bundles were to be weighed and the Panchnama of weight was to be made of the grassy yard as on the basis of the average weight of the bundles. After transport at the depot the bundles were to be counted (मोजणी) and not weighed and if there was any shortage in number of bundles the contractor was liable but not otherwise. The reference in clause 7 of the second part of agreement to shortage appears to be to the number and not weight. Therefore, the view taken by the committee that the contractor should be paid on the basis of weighment at the yard recorded by the Forest Department as per Kande Panchnama is correct.

Under clause 5 of the first part of the agreement the contractor was bound to dry the grass even if it became wet after cutting. As he failed to do so he has become liable to penalty as specified in that clause. It is presumed that the amount of Rs. 813-7-4 is calculated on that basis. If so, the view taken by the Committee that the contractor should be made to refund thisamount is correct.

Sd/- P.M.Lad
4-10

Remembrancer of Legal Affairs.

U.R. to C .S.D. ,No. G- 506 , dated the 6th October 1952.

Office of the R.L.A.

From clause 11 it is clear that Government can either discontinue or restrict the sending of milk to Bombay for any specified period by giving a 36 hours notice to the Union. Government is to bear the loss for the first 36 hours if no prior notice of 36 hours is given to the Union and after the expiry of 36 hours, the Union has not to purchase any milk in excess of the Government instructions for the remaining period. The quantity restricted cannot, however, exceed 15 percent of the contracted quantity at any time. Therefore if Government restricts the supply beyond that percentage, it would amount to breach of the agreement. But the Union would not be entitled to the difference between the rate of purchase and the market rate in respect of the quantity restricted beyond 15 percent. as there is no provision to that effect in the agreement.

Sd/-P.M.Lad
1-10

Remembrancer of Legal Affairs.

U.R. to M.C.,No. G- 498 , dated the 1st October 1952.

S.C. 26/7

4 copies.

Office of the R.L.A.

Clause 7 of the agreement with the Contractor provides that, he shall carry out the transport work as promptly and as expeditiously as possible and in the manner as may be entered by the Collector and shall supply and engage sufficient number of trucks in the manner as may be ordered by the Collector and on his failure to comply with the order of the Collector as to the number of trucks to be supplied or as to the manner of transport the Company will be deemd deemed to have made a breach ofthis agreement, and will be liable to pay damages to the Collector. It is further added that these damages will cover inter alia the extra expenditure incurred by Government in engaging outside lorries and carts at higher rate on account of thefailure of the Contractor to carry out the transport work. Under clause 3(a) of the agreement the Contractor had agreed to supply at any onetime trucks up to a maximum of 10 for the transport of foodgrains on Government account. As the contractor had failed to supply the maximum number oftrucks in the manner as ordered by the Collector, he has committed a breach of the agreement and therefore he will be liable for damages to the Collector under clause 7. It does not, however, seem necessary to file a civil suit for recovery of these damages in view of the specific provision made in condition 34 of the agreement that all amounts due to Government or recoverable by it under this agreement should be deemed to be recoverable as arrears of land revenue. The amount of Rs. 25,000/- can therefore be recovered as an arrear of land revenue as provided in that clause.

Sd/-P.M.Lad
31-10

Remembrancer of Legal Affairs.

U.R. to C.S.D. , No. G- 574 , dated the 31st October 1952.

Office of the R.L.A.

The claim of Government of about two lacs against the Vishwabharati Insurance Company is in respect of transport work done by Messrs. Bombay Steam Navigation Company during the year 1946-47. It is true that the Chief agent of the Vishwabharati Insurance Company Shri Laxmidas Ramji through whom the Insurance work was done is a partner of Messrs. R. Naraindas and Company. but that is not a valid ground for withholding refund of deposit to Messrs. R. Naraindas and Company for the work done by them forthe year 1947-48. Clause 17 ofthe agreement so provides that the deposit to a security for the due performance and carrying out of the terms and conditions of the agreement and Government shall be at full liberty to reimburse themselves out of the said deposit for all lossess suffered by them by virtue of any breach of the terms and conditions of the agreement or of any irregularity or negligence on the part of the transporters resulting in a financial loss to Government. The deposit cannot therefore be withheld for anything anything which is not covered by the provisions of clause 17.

Under Article 145 of Schedule I of the Indian Limitation Act, 1908 the limitation period for recovery of deposit from the depository is 30 years from the date of deposit. In Lala Gobind Prasad Vs. Chairman Patna Municipality 6 Cal. Law J. 535 it was held that if a Government security or a sum of money is delivered to be held as security for the performance of some engagement such a deposit would come under article 145 However in this case even if article 120 is made applicable the 6 years period would elapse in December 1953 and as in the case of Upendralal Mukhopadhya Vs. the Collector of Rajshahya 12 I.L.R. Cal. 113, it is unnecessary to decide whether article 145 applies or not as the 6 years period is still to lapse The claim of Messrs. R.Naraindas for the balance of the deposit is therefore not time-barred.

Sd/- P.M.Lad
9-10

Remembrancer of Legal Affairs.

U.R. to F.C., No. G- 520 , dated the 9th October 1952.

Office of the R.L.A.

The following two questions are raised for R.L.A.'s consideration :-

(1) Whether the Sentinel Insurance Company, Limited, can be held liable for the loss of 208 bags of wheat which were reported to have been jettisoned by the Tindel.

(2) Whether the Transporters can be held liable for the loss under clause 5 of the agreement.

Question No. 1 :- Clause 2 of the agreement at slip Z between the Sentinel Insurance Company and Government provides that the Company will accept the risk of F.P.A. and Jettisoning by Stress of Weather only and that the policy will not cover shortage, theft, pilferage, S.R.C.C. non-delivery, damage by sea,rain or fresh water. The policy at page 267 ante provides as follows .-

> "Warranted free from average unless the Native Craft be sunk or burnt but to cover the risk of jettison if necessitated by stress of wheather only.
>
> Should the Native Craft run aground or strand, the liability under this policy shall entirely cause from the amount moment of running aground or standing except in respect of total loss by total loss of the Native Craft.
>
> Notwithstanding the foregoing provision the full conditions of the Policy shall continue immediately upon the Native Craft refloating provided the Native Craft be in a seaworthy condition."

In this case the Tindel's protest at page 127A shows that he was forced to Jettison the wheat bags as the craft started shipping water due to its dashing against the rock. The Insurance Company is liable only if jettison losses are due to stress of wheather. As there is no evidence of the weather being bad or stormy, the view taken by the Insurance Company in their letter at page 115 appears to be correct. Under the terms of the agreement as well as that of the policy, the Insurance Company cannot be hold liable for the losses in this case.

Question No. 2.- The transporters can be held liable for the loss under the clauses 2,5 and 12 of the agreement. Clause 2 provides that the transporters shall carry the goods entrusted to them for carriage in completly sound and seaworth

S.C.
26/7

crafts. From the panchnama at page 75 of the Police enquiry papers it appears a brass plate or sheet 4 feet 9 inches was fixed at the bottom below which there were holes and there were two tin plates fixed below which canvass cloth was found fixed and in spoilt condition . All this shows that the craft was not completely sound and seaworthy. Under clause 5 of the agreement the Transporters are liable for handing over at distination the actual number of bags despatched from Bombay and for shortages and leakages but it is provided that in case of jettisoning the Transporters shall assist in recovering loss from the Insurance Company. A Jettisoning otherwise than due to stress of weather is not the responsibility of the Insurance Company such a loss cannot be recovered from the Insurance Company. Obviously therefore for jettisoning otherwise than stress of weather the transporters are liable as they have failed to hand over at destination the actual number of bags despatched from Bombay. Under clause 12 the Transporters shall be responsible to Government for theloss arising due to negligence, fraud, inadvertence pilferage, malpractices, etc., of the Tindel and they are bound to make good the value of the grains to Government at such rates as may be fixed by the Food Controller. In this case the Police have closed the case by obtaining a "C" summary i.e. "neither true nor maliciously false" but from page 90 of the police papers it appears that the case was really of "A" summary i.e. true but undetected" but the Police thought that if it is so classified Government will not be able to claim the loss from the Insurance Company or from the Accused i.e. Tindel and therefore they classified it as "C". The statement of the Range Officer at Vengurla also shows that there was foul play. That day was 8th of moonlight night and there was moonlight till midnight and the statements of the Tindel and Khalashis that as it was dark they could not see the dark object on the rock, are not reliable. The panchnama at page 73 of the Police enquiry papers also goes to show that the holes in the bottom were small and it appears that the theory of dashing on the rock is fictitious. The Tindel's further journey in the craft shows that the craft was not so badly damaged. The Transporters should be held liable on the ground that there was fraud on the

part of Tindel although evidence necessary launch a prosecution could not be obtained. The transporters can therefore be held liable under * all the three clauses mentioned above.

As regards the obtaining by the Police of "C" summary in this case, the police should be asked to move the Magistrate again to get the summary changed to "A" summary which according to them should have been obtained in this case.

Sd/- P.M.Lad
21-10

Remembrancer of Legal Affairs.

U.R. to I.C. No. G- 549 dated the 22nd October 1952.

S.C. 26/7

4 copies.

Office of the R.L.A.

From the letter of the State Textile Controller to the General Manager of the Provincial Industrial Cooperative Association dated the 3rd August 1951 and other papers it is quite evident that there was a mutual agreement between the State Textile Controller and the Provincial Industrial Cooperative Association that the storage compensation should be paid at the rate of Re. 1/- only. According to the State Textile Controller the figure Rs. 1-4-0 was mentioned because of a typographical error. For the period from September 1948 to 6th June 1949 there was no written agreement in existence and the agreement for this period is to be spelt out of the correspondence. Shri Tandon, the General Manager of P.I.C.A. has agreed agreed on the 16th September 1948 that although the rate was referred to in the letter of the Director of Civil Supplies (Accounts) as Rs. 1-4-0, the compensation shall be Re 1/-. On the 30th April 1949 Shri Tandon applied for an increase of this compensation to Rs. 1-12-0 per bale and on the 2nd June 1949 he was informed that the Association was being paid a storage compensation of Rs. 1-4-0 and their request for Rs. 1-12-0 cannot be granted. Ordinarily the typographical error in the agreement would not have been binding on the parties if their mutual agreement was for Re /1/- but in view of the above letter of the P.I.C.A. replied to by the State Textile Controller it cannot be said that P.I.C.A. agreed to Re 1/- after the letter dated the 2nd June 1949 reached them. Storage compensation would therefore be payable to the P.I.C.A. at the rate of Re 1/- upto the time the State Textile Controller's letter dated the 2nd June 1949 reached P.I.C.A. and thereafter they will be entitled to storage compensation being paid at Rs. 1-4-0 till the 8th December 1950.

From the note of the Assistant Director of Civil Supplies (Accounts), dated the 22nd March 1951 at slip C it appears that this difference comes to Rs. 33,721-4-0 upto end of May 1949. According to the compromise suggested by Minister

(Ed. & Law) the difference to be recovered from P.I.C.A. comes to Rs. 52,000. The decision of the Minister (Ed. & Law) is beneficial to Government and may be accepted.

Sd/-P.M.Lad
29-10

Remembrancer of Legal Affairs.

U.R. to F.D. No. G- 571, dated the 31st October 1952.

S.C. 26/1
4 Copi

Office of the R.L.A.

The question is whether suits can be successfully filed against Shri N.C.Parikh and Shri Velji Desai for recovery of the loss of Rs. 35,495-4-5 and Rs.8,615-1-9, respectively, incurred by Government in view of their failure to take delivery and make payment of stocks of discoloured sugar which they contracted to purchase at the auction sale held on 30th June 1951 and which Government had to sell at a lower price at a subsequent auction sale in view of their default.

From the auction sale notice at page 5 it appears that the conditions of the auction were to be announced at the time of the auction. In the memorandum issued to other officers regarding this auction at page 21, the Director ofCivil Supplies (Accounts) informed them that as a result of this auction the stocks were sold to the highest biddors mentioned in the accompanying list subject to the conditions (a) to (c) enumerated in the said memorandum. Condition (c) runs as follows :-

(c) The stocks are sold for being used as cattlefeed or as starch for industrial purpose. The stocks should not be used for human consumption. Serious notice will be taken by Government fo any breach of this condition. Damaged sugar however can be used for human consumption after processing and cleaning it."

In the letter dated 24th July 1951, Shri N.C.Parikh wrote that he had received the sale-memo, and that he was surprised to read paragraph (c) and especially the condition "Damaged sugar, however, can be used for human consumption after processing and cleaning it". Hiscontention was that this condition was never announced at the time of the auction and if it was not observed then the stock would be only for cattle feed which was contrary to the condition at the time of sale that the stocks were for human consumption. He further stated that cleaning and processing sugar would mean an additional expense of Rs. 15/- per Bengal maund which should be paid to him and that without this he was not in a position to take delivery. Thereafter on the 26th July 1951 the Director of Civil Supplies (Accounts) amended the sale-memo as

memo in which the words underlined above were deleted. It is not clear from the papers whether the contention of Shri Parikh that condition (c) was never announced at the time of auction has any substance or not. From the draft at page 17 it appears that the underlined words were added afterwards. This may be the reason for that subsequent deletion on the 26th July 1951. If these words were afterwards added and deleted that would not materially affect the case if condition (c) without the underlined words was announced at the auction, because as that condition stands sugar which was auctioned was not meant for being used for human consumption. Besides it is not clear whether sugar could be used as cattlefeed or as starch for industrial purpose. If not, the condition without the underlined words would be interpreted as applying to other stocks of foodgx foodgrains and not to sugar. It would not be possible to give any definite opinion about the successful institution ofsuits unless the Director of Civil Supplies (Accounts) office clerifies the above points in the first instance.

Sd/- P.M.Lad
2-4

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-149 , dated the 2nd April 1952.

S.C. 27/7

4 copies.

Office of the R.L.A.

The auction sale notice No. L.A. 6635 dated the 23rd June 1951 announces that an auction for the sale of by-products and other miscellaneous articles will be held by the Director of Civil Supplies (Accounts) on the 30th June 1951 and that those who are interested in purchasing the stocks are requested to see the condition of the stocks and at end the auction. It states that "other conditions of the auction would be announced at the time of the auction etc." Paragraph 2 of the Civil Supplies Department Memorandum dated the 9th July 1951 states that as a result of a auction the stocks were sold to the highest bidders mentioned in the accompanying list "subject to the conditions mentioned below." Condition (C) provides that "the stocks are sold for being used as cattle feed or as starch for industrial purpose." The stocks should not be used for human consumption. Serious notice will be taken by Government for any braach of this condition. Damaged sugar can be used for human consumption after processing and cleaning it". In his letter dated the 24th July 1951, Shri Parikh states that "this condition was never announced at the time ofauction and if it is to be observed the stock is supposed to be for cattle-feed which is quite contrary to the condition at the time of sale that the stocks were for human consumption." It is no doubt true that the last line of condition (C) was deleted by the Director of Civil Supplies (Accounts) on the 26th July 1951. but that would not affect the condition laid down therein that the stocks shall not be used for human consumption. In his subsequent letter dated the 14th September 1951, Shri Parikh states that it was announced that the stocks of sugar were for human consumption while condition (C) states that it is sold for cattle-feed only. In the marginal note at p. 11 ante, the Director of Civil Supplies (Accounts) states that "there was no intention to restrict the use to non-human". This view of the Director of Civil Supplies (Accounts) cannot, therefore, be reconciled with condition

(C) and his view supports the contention of Shri Parikh. It is condition (c) which has created trouble. The Civil Supplies Department ~~xf~~ is therefore requested to state -

(1) Whether such a condition so far as stocks of sugar are concerned was announced at the time of auction which would be binding on Shri Parikh; and

(ii) What "other conditions of the auction" were announced at the time of the sale.

Sd/-

For Remembrancer of Legal Affairs.

U.R. to F.G. No. G-228, dated the 30th May 1952.

S.C. 27/7

4 copies.

Office of the R.L.A.

From the information furnished by the Director of Civil Supplies it may be gathered that Condition (c) was not announced at the time of the auction sale and that both parties assumed that the sugar may be utilised for human consumption. The sale was completed on that ~~kxi~~ basis. The Civil Supplies Department later on tried to impose a condition that the stock of sugar may not be used for human consumption unless the sugar was cleaned and subjected to some processes. But when it was realised that no such condition had been mentioned at the time of the auction the attempt to impose such a condition was given up and the parties were asked to take delivery without agreeing to any such new condition. But they failed to take delivery and hence the Government resold the sugar at the risk of theauction purchasers after giving them notice of the proposed action. Under these circumstances the loss caused to the Government on resale can be properly and legally claimed from the defaulters.

Sd/-P.M.Lad
8-8

Remembrancer of Legal Affairs.

U.R. to F.C., No. G- 378 , dated the 8th August 1952.

Office of the R.L.A.

The Milk Commissioners' office propose to give a reply to Messrs. Anand Milk Products Limited on the lines of the draft at pages 237 to 243 ante. This reply has been shown to R.L.A. for approval before issue.

In the reply, the first item that is discussed is coal. A statement is made in the draft reply in the effect that under clause 16(1)(a) of the agreement the cost of coal is only to be adjusted to the year subsequent to the year 1947 which was the basic year. There is no express provision in clause 16(1)(a) to this effect. The mention of the year 1947 is made in respect of the baisc figure arrived at by taking into consideration the coal consumed per maund by Messrs. Polson Limited. It is not expressly stated in this clause that for 1947 the payment for coal will be calculated at the basic figure; but reference to the ~~mk~~ adjustment in respect of the average landed cost at controlled rate for subsequent years makes it quite clear that the adjustments are to be made in respect of the subsequent year and as nothing was said about the year 1947, for that year the payment was to be made at the rate given as basic figure. In clause 19 it is provided that notwithstanding any provisions to the contrary the period of first four months from 4th August 1947 shall be treated as an educational period and the company shall be paid Rs. 7/- (Rupees seven only) per month as processing charges instead of Rs. 5-12-0 as provided for in clause 15. After the expiry of this period, however, that is on and from 4th December 1947 the processing charge shall be paid at Rs. 5-12-0 per maund of milk. From this clause it appears that the processing charge was Rs. 5-12-0 and was adjustable for subsequent years but the processing charge of Rs. 7/- was not adjustable/as it was given as a sort of concessional special rate, and the only question of adjustment, if at all, would be for a period from 4th December 1947 to 31st December 1947. It is not clear from the papers but it may be that the payment of processing charge at the rate of Rs. 7/- would work out to

something more than the adjustment rates provided for in clause 16. So far as this item is concerned, the Company's claim deserves to be rejected.

The second item is regarding the value of coal ash. It is true, as stated by the Anand Milk Products Limited in their letter dated the 15th June 1952, that there is no mention of coal ashes in the agreement between them and the Government. But the average costs of coal was to be worked out by taking therefrom the value of the coal ash realised, and the Polson's figures were based on such deduction, and therefore as the accounts produced by the Anand Milk Products did not show the value of the coal ash, which they utilised for some other purpose, the percentage arrived at by the Polson was taken to be the average. The Company however contends that they utilised the coal ash in the boiler and thereby considerably reduced the coal consumption If there is any truth in this contention, some relief may be offered to the Company.

The third item is regarding railway freight. The Milk Commissioner has stated that this railway freight is payable to respect of the year 1947. This does not appear to be correct because in the Milk Commissioner's office note at page 217 ante it is stated that this is the difference which was claimed for the trips from 1948 to 1951. The wording of clause 16(2) is similar to the wording of clause 16(1). There also nothing has been said about 1947, but as the claim is for subsequent years, it is to be adjusted on the basis of the actual rate for actual van mileage done during those years. The Company's contention that Rs. 83-12-0 is a typographical error is also not correct, and the Company has been rightly paid on the basis of the actual van mileage done by them during the y at the rate actually paid by them. Even if the typographical error as alleged is proved, it would not make any difference when the actual freight has been paid by Government.

The next item is regarding restricted supplies. The Company does not claim compensation for Government reducing the supply beyond 10 percent. What it claims is compensation

for the over-head charges. There is some substance in this contention. Government may give some relief in this respect to the Company.

The next item is regarding electricity. Regarding electricity item - further bill No. 905-4-0 has already been admitted by Government. The only item to be considered would be Rs. 10,951-4-0 being the difference in depreciation charge of generating sets. In clause 16(1)(b) of the agreement which deals with electricity, it is definitely stated that the rates which are agreed to are for electricity purchased or generated, and whether the Company has purchased or generated the electricity the same rates would apply. The difference was to be adjusted over the figures of Rs. 48,455-15-2 and not on the average per maund. Government has taken a fair and equitable view and allowed adjustment at maund rate as otherwise the Company would have to pay Rs. 52,378-13-1 to Government The agreement is silent on the point of depreciation and therefore the depreciation has been paid by Government at a reasonable rate viz. 10 percent. The Company has contended that the Income Tax authorities i allowed a depreciation at 15 percent. But this may be due to the fact that the real state of affairs was not brought to the notice of the Income Tax Department. The Company was purchasing electricity from Anand Electric Supply Company and the generators were only kept as a stand by in case of breakdown of the regualr supply or when extra electricity was required. This xtx claim of the Company may, therefore, be rejected.

The claims of Messrs. Anand Milk Products Limited in respect of the various items may therefore be considered in the light of the above remarks and the draft reply may be suitably amended and forwarded to the R.L.A. for scrutiny, if necessary.

Sd/-P.M.Lad
8-12

Remembrancer of Legal Affairs.

U.R. to M.C. No. G- 678 , dated the 8th December 1952.

Even though the words "to any place within India" are not incorporated in condition (vi) of the acceptance letter of the Director of Civil Supplies (Accounts), dated the 19th June 1951, in view of the fact that the powers of this Government to issue permits is limited to movement within India and the fact that the offer of Messrs. Manures and Feeds at p. 15 ante does contain those words, those words will have to be construed as being impliedly incorporated. Although export permit was not issued by this Government for Daman, Messrs. Manures and Feeds ought to have taken delivery of dates on the dates as contracted for. They have committed a breach of the conditions of the contract and are therefore, liable in damages as provided in section 54(2) of the Indian Sales of Goods Act. A civil suit will lie against them.

In view of the rulings in the case of Secretary of State for India Vs. Bhagwandas Goverdhandas 40 B.L.R. 19 and in the case of Devidas Shri Krishna Prasad Vs. Secretary of State for India 1941 Allahabad 741 the technical plea that no formal contract was entered into in this case will not be open to the other side. The only difficulty, however would be that as required by Art. 299 of the Constitution, the Contract was not expressed to be made in the name of the Governor of the State. The case in 40 B.L.R. 19 was lost by Government on this point that although contract would be spelt from correspondence, the correspondence should be on behalf of the Government. The In this case the letter of acceptance dated the 19th June 1951 is signed by the Director of Civil Supplies (Accounts) who is authorised under Government Resolution, Home Department, No. 1758/6, dated the 26th January 1950 to execute contracts on behalf ofthe Governor of Bombay. Besides in the said letter he has stated that the "Government has accepted the offer etc" Even though the words "Governor of Bombay" are not used, the fact that the offer was accepted on behalf of the Government would perhaps be considered as sufficient compliance by the

art.

Sd/-P.M.Lad
26-8
Remembrancer of Legal Affairs.

U.R. to F.A. No. G- 412 , dated the 26th August 1952.

S.C. 27/7

Office of the R.L.A.

In this case the oral evidence was unworthy of belief, the circumstancial evidence of the condition of the craft, weather, damages etc., supported the defence, the investigation was faulty and certain material evidence was kept back by the prosecution. Taking all these circumstances into consideration this case does not appear to be a fit one for taking in appeal.

In his judgment, the Magistrate, First Class, Dapoli has come to the unmeant conclusion that the craft was in a bad condition and unseaworthy (portion marked "B" at page 75 ante). Although the Civil Court will not be bound by the above conclusion arrived at by the Criminal Court, the proposed sale of the craft for Rs. 1,700/- and the evidence, if led, of the former tindel Abdulla Mohamed Talangore and of Bapdi Abdul Rehman, its former owner would be sufficient to prove that the craft was old and leaky and therfore unseaworthy. Under condition 2 of the contract the terms of which are binding on the contractor as held in R.L.A.'s opinion No. G-441, dated the 12th September 1952, the contractor was bound to carry the goods in completly sound and seaworthy country crafts. A suit would therefore lie against the contractor for the balance due under clause 2 of the Agreement and also under the general law of bailment.

It is true that the Insurance Company will be liable forthe loss as there was total loss of cargo due to sinking. But as stated in R.L.A.'s opinion No. G-431, dated the 9th November 1952 in every voyage policy there is an implied warranty that the ship shall be seaworthy for the voyage when it sails. The sinking can be attributed to stress of weather as well as unseaworthiness and therefore the Insurance Company will not accept liability. There is therefore no point in writing to them. Besides that would weaken our claim against the contractor.

Sd/-P.M.Lad
22-12

Remembrancer of Legal Affairs.

U.R. to F.C. , No. G- 708 , dated the 22nd December 1952.